(2)

No. 06-951

In the Supreme Court of the United States

NADA RAAD

PETITIONER

VS.

FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

RESPONDENT

ON PETITION FOR THE REHEARING ON A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR REHEARING ON A WRIT OF CERTIORARI

Ground for Petition for rehearing

The District Court did not follow the guidelines Of the U.S. Supreme Court and Ninth Circuit Court of appeal in awarding attorney fees against petitioner. The District Court overlooked the qualification of petition that was already established during summary judgment. The District Court did not admitted some exhibits that will support her case. The Jury either did not understand the instructions or overlook the instructions. Petitioner is unable to pay the attorney fees.

JURISDICTION

The date on which the United State Court of Appeals for the Nine Circuit decided my case was August 24, 2006 and a copy of the opinion appears at Appendix A in the Writ of Certiorari. A timely petition for rehearing and rehearing en banc was denied by the United States Court of appeals on the following Date September 28, 2006 and a copy of the order appears at Appendix B in the Writ of Certiorari.. The Jurisdiction of this Court is invoked under 28 U.S. C. § 1254(1). The US Supreme Court denied the writ of certiorari on February 26, 2007. Petition for rehearing was postmarked March 19, 2007. Corrected petition to be filed within 15 days from March 22, 2007.

Argument

This is a title VII of the Civil Rights Act of 1964 Civil Rights act, 42 U.S.C. 2000e et seq,. The District Court [Docket 353] and the Ninth Circuit in Raad v. Fairbanks North Star Borough School District, 323 F. 3d 1185-1198 (9th cir. 2003) has held that Plaintiff established a prima facie case of discrimination that she raised for Title VII 2000e et seq. See (Appendix A in the Writ of Certiorari).

Petitioner was entitled to the science position at Lathrop High School in 1993 as a resolution for her after complaint to Respondent EEO. Petitioner complained to EEO in 1992 regarding rejecting her for a science position at Tanana Middle School because of her accent as confirmed during deposition of Tanana Middle School Principal. The record reflected outstanding recommendations regarding Petitioner qualifications. The District Court opinion on summary judgment reflected the superior qualification of Petitioner but referred to a case by another circuit for a need of "slap on the face to show superiority of qualification. The Ninth Circuit Court of Appeal rejected this argument Raad v. Fairbanks North Star Borough School District, 323 F. 3d 1185-1198 (9th cir. 2003) where as superiority of qualification for petitioner stand as a fact not disputed. In addition, Petitioner had priority over a new hire because of her temporary teaching position for the school year 1992-1993 that was part of the resolution for complaining to EEO in 1992. Applicants that were hired as temporary teaching position during the1992-1993 school year were rehired the following

year with no competitive interview. This confirmed that Petitioner had a priority over new hired and should awarded the science position at Lathrop High School for the school year 1993-1994 but instead she was falsely accused that she threatened to blow up the building and refusing to leave stating in the police log" A Lebanese woman threatened to blow up the building and refusing to leave." Respondent treated other applicants more favorable than petitioner during the same period Petitioner was not selected for teaching position. Among the jury instructions was to see if respondent treated other applicants more favorable. Petitioner presented exhibits showing that other applicants had been treated more favorable. Some exhibits were not admitted by the District Court showed additional information where other applicants were treated more favorable than Petitioner. It is either the Jury did not understand the instructions or overlook the instructions. The suspension against petitioner was based on false allegations and it was only after District Attorney declined to press charges to cover up for discrimination and retaliation by Respondent. Respondent spread rumors about the alleged false bomb threat because of petitioner national origin and religion which was a burden for petitioner to find a full time job for many years and caused more financial hardship for Petitioner. Petitioner had to borrow money and get loans for living and for paying her Counselor attorney fees and cost. Petitioner is still in dept. Respondent misrepresented to the District Court the financial situation of petitioner. Respondent acted in a bad faith. Through all these years,

Petitioner was represented by a counselor that presented her case. The Court should not punish petitioner if she lost her case. Petitioner still believed that Responded discriminated and retaliated against because of her national origin and religion.

The District Court did not follow the guidelines of the U.S. Supreme Court and Ninth Circuit Court of appeal in awarding attorney fees against petitioner. In 2001, Judge Holland in the District court agreed that prima facie case had been established and followed the guideline of the Ninth circuit Court of Appeal by denying attorney fees against Petitioner when Respondent filed summary judgment by referring to Warren v. City of Carlsbad, 58 F. 3d 439, 444 (9th Cir. 1995). The District court asked respondent to appeal awarding attorney fees if they do not agree with his decision. Respondent declined. At that time in 2001 Respondent asked for ~ $300,000 as an attorney fees (District Court Docket # 385). Petitioner counselor appealed to the Ninth Circuit Court of appeal in 2001. At that time discovery was completed. Mediation effort by the Ninth Circuit was not successful. All parties signed on confidentiality of this meeting. In 2003 the Ninth circuit ordered to go back to trial. Counselors did not work on this case during the period of appeal. The trail was in January 2004. Respondent have incurred legal costs of more than $887,000 after the trial and released confidential information related to the Ninth Circuit mediation conference. The attorney fees jumped within a period of a year from ~ $300,000 to $ 887,000. It does not make sense

for such drastic changes in this amount of bill where discovery was over. Respondent asked to be awarded $180,000 and was awarded $150,000. Judge Beistline at the District court ordered awarding attorney fees for respondent of an amount of $150,000 stating that the case is frivolous ignoring the guidelines to award attorney fees against petitioner. The District Court gave no explanation why the case was frivolous. The District Court failed to show if plaintiff's claims lacked merit, had no foundation or not reasonable, frivolous or brought in a bad faith. The district Court at three occasions gave contradicting explanation that cannot be reconciled. The district court awarded attorney fees against petitioner when stated first that the case is entirely frivolous then stated that there was "no rational basis for plaintiff allegation of discrimination and that the plaintiff claims were frivolous and totally lacking any factual foundation" (Appendix A in the Writ of Certiorari). In a later order, the district court did note that Raad presented one "legitimate jury issue" namely, "that she was disciplined inordinately because of her race and or religion after the incident in the superintendent's office." The District Court declined to follow the guidelines of the Ninth circuit Court of appeal where petition established prima facia case and went to trial upon an order Raad v. Fairbanks North Star Borough School District, 323 F. 3d 1185-1198 (9th cir. 2003) Petitioner can not defend herself if no explanation given to why the case is frivolous and had no foundation.

Petitioner received right-to sue letter from the EEOC, thus indication that there was

"an adequate basis in law and facts" to pursue the claim and indicating that the case was not without merit; Jensen v. Stangel, 762 F. 2d 815, 818 (9th Cir 1985).

The District Court did not find that any of the discoveries sought by Plaintiff was vexatious, frivolous or sought in bad faith. (District court docket 269).

Petitioner established prima facia case and went to trial Raad v. Fairbanks North Star Borough School District, 323 F. 3d 1185, 1187 (9th cir. 2003). In Warren v. City of Carlsbad, 58 F.3d 439, 443 (9th Cir. 1995), "Suggesting that a plaintiff who makes out a prima facie case under Title VII cannot be found to have presented a claim that is "Frivolous, unreasonable or groundless Id. At 445. In so stating the Ninth Circuit has reference to the case of Marguart v. Lodge 837, Int'l Ass'n of Machinists, 26 F.3d 842, 853 (8th Circuit 1994). Furthermore, the U.S. Supreme Court's ruling that Civil Rights plaintiff's do not need any direct evidence of discrimination and can proceed to trial if they establish a prima facie case of discrimination and present evidence showing that the employer's excuse is a pretext. See Reeves v. Sanderson Plumbing Products. Inc., 4 U.S (99-536) 530 U.S. 133 (2000) 197 F. 3d 688.

The district court did note after awarding attorney fees to respondent that Petitioner presented one "legitimate jury issue" namely, "that she was disciplined inordinately because of her race and or religion after the incident in the superintendent's office." (Appendix A in the Writ of Certiorari). The District Court failed to reverse awarding attorney fees for respondent

after admitting that Petitioner presented one "legitimate jury issue" . This indicated that this case does not lack a reasonable or arguable basis in law of fact which in return make it not frivolous or lack of foundation. The U.S. Supreme Court stated that "A claim is frivolous if it lacks a reasonable or arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325,109 S.Ct. 1827, 1831, 104 L.Ed.2d 338, 347 (1989)".

The district court did not give an explanation for any unusual development at trial referring to AFSMCE v. County of Nassau, 96 F. 3d 644 (2d Cir 1996) "The district court however, points to no such unusual circumstance here, and I am aware of none.....and there was no explanation by the district court that takes account of the prior reversal of summary judgment in this case, I would reverse the fee award" (Appendix A in the Writ of Certiorari).

The District Court did not give any adequate explanation why the fee award was justified. "A fee award without adequate justification cannot stand" (Appendix A in the Writ of Certiorari) See Tutor-Saliba Corp. v. City of Hailey, 452 F. 3d 1055, 1065 (9th Cir. 2006); Benton v. Or. Student Assitance Comm'n , 421 F. 3d 901, 904 (9th Cir. 2005); Cummings v. Connell, 402, F. 3d 936, 947 (9th Cir. 2005).

The US Supreme Court referred to stringent standards apply to fee awards against plaintiffs in civil rights cases. The district court should award a prevailing defendant attorney's fees only if the plaintiff action was frivolous,

unreasonable or without foundation and none of these applied that petitioner is aware of, See Christianburg Garment Co. v. EEOC, 434 U.S. 412, 421-22 (1978). United States Steel Corp. v. United States, 519 F.2d 359, 362 (CA3) Carrion v. Yeshiva University, 535 F.2d 722 (Cir Two). Petitioner met all the criteria as discussed above that showed that her case is not frivolous and had foundation and had rational basis for petitioner allegation of discrimination and retaliation.

The above argument supported that the District Court did not follow the standards to award attorney fees against petitioner. For the reasons stated above Petitioner is asking U.S. Supreme Court to reverse and vacate awarding attorney fees without justification Absent that disposition, petitioner is asking this court to remanded this case to the District Court for an explanation and allow Petitioner to present evidence to show pretext, discrimination and retaliation by Respondent.

REASONS FOR GRANTING THE PETITION

This case is important for public since U.S. Supreme Court set stringent application of not awarding attorney fees against appellant in Title VII cases. The District Court declined to follow the guidelines for awarding attorney fees against petitioner. The District court did not allow admitting some exhibits to support Petitioner case.

CONCLUSION

Petitioner is praying that her petition for a rehearing on the writ of certiorari will be granted.

Respectfully submitted,

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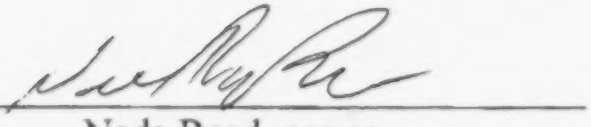
Date: April 3, 2007

CERTIFICATION

ON PETITION FOR REHEARING ON THE WRIT OF CERTIORARI

Pursuant to United States Supreme Court Rule 44, I certify that I filed corrected petition for rehearing on the writ of certiorari on other grounds and filed in a good faith and not for delay.

Dated this 3 day of April, 2007 at Fairbanks, Alaska



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